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CHAN HUA ENG & ANOR

v.

DATUK BANDAR KUALA LUMPUR & ORS

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HIGH COURT MALAYA, KUALA LUMPUR
MOHD ZAWAWI SALLEH J
[JUDICIAL REVIEW NO: R2-25-105-2008]
11 APRIL 2011

C ***LAND LAW:*** *Planning permission - Application for certiorari - Whether 1st respondent failed to take into account Draft Local Plan - Whether grant of planning permission proper - Statutory powers of the 1st respondent - Effect of - Federal Territory (Planning) Act 1982, ss. 16(1), 22(4) & 27*

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The applicants' lands had been located along the same road on Changkat Kia Peng as Lots 241 and 242, Section 63, Jalan Changkat Kia Peng ('Subject Property One' and 'Subject Property Two') respectively. The respondent applied for planning permission to develop both the properties and placed an advertisement giving notice of the proposed development thus giving an opportunity to the registered owners of the adjoining lands to lodge their objections, if any. The applicants objected to the proposed development of both the properties. However, the 1st respondent granted the Development Order for both properties ('Impugned Decision') and the applicants filed this application to quash the said Impugned Decision. There were three main issues that arose for determination before this court. Firstly, whether the 1st respondent's decision in granting planning permission had been an abuse of statutory discretion and a misconstruance of the effect of its statutory powers under s. 27 of the Federal Territory (Planning) Act 1982 ('Act 267'). Secondly, whether the 1st respondent had failed to consider relevant considerations when granting planning permission to the 3rd and 4th respondents. Thirdly, whether the 1st respondent had failed to observe the rules of natural justice and procedural fairness by denying the applicants the right to inspect the relevant development plan and denying them their right to be heard on the same.

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Held (dismissing the applicants' application with costs):

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(1) In taking into account the relevant considerations under s. 22(4) of Act 267, regard should be had to the Local Plan and not the Draft Local Plan. As the local plan had yet to be

adopted in accordance with s. 16(1), the 1st respondent had to have regard to the Comprehensive Development Plan and any other material consideration. (para 12)

(2) The 1st respondent had filed an affidavit setting out the matters he had taken into consideration in granting the planning permission and based on his affidavit he had given cogent reasons, and taken into account relevant considerations in deciding on whether or not to grant it. (paras 14 & 16)

(3) The applicants' allegations that the 1st respondent had not provided them with certain guidelines at the oral hearing of the objection, could not be accepted. The guidelines had been a public document which had been available to the general public and could be accessed through the website. Further, the 1st respondent had stated that the applicants had not requested for the guidelines during the hearing of the objections. Thus this complaint by the applicants had no merit. (paras 17 & 18)

(4) The applicants' grounds for challenging the 1st respondent's decision no longer held water for the simple reason that the applicants themselves had applied for planning permission to develop their land which had been located next to Subject Property One and Subject Property Two. Further the applicants' planning permission had been granted by the 1st respondent in principle and it had been the applicants who had failed to submit the requested plans to the 1st respondent. As such there had not been any basis for the alleged differential treatment given by the 1st respondent in respect of Subject Property Two. (paras 21-22)

(5) Planning judgment was within the exclusive province of the local planning authority. Judicial review was to be exercised in exceptional cases and the non-existence of a fact had to be left to the judgment and discretion of the local authority. The grounds advanced by the applicant had been matters relating to the merits of the planning decision and it had not been the function of the court to adjudicate upon the decision of the planning authority. (paras 23-24)

Case(s) referred to:

Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor [2008] 6 CLJ 805 CA ***(refd)***

Datuk Bandar Kuala Lumpur v. Zain Azahari Zainal Abidin [1997] 2 CLJ 248 CA ***(refd)***

Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC ***(refd)***

R (on the application of Alconbury Development Ltd) v. Secretary of State for Environment, Transport and the Region and Other Cases [2001] 2 All ER 929 ***(refd)***

R v. Criminal Injuries Compensation Board, Ex p A [1999] 2 AC 330 ***(refd)***

R v. Hillingdon London Borough Council, Ex p Puhlhofer [1986] AC 484 ***(refd)***

YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Jaafar v. Datuk Bandar Kuala Lumpur & Anor [2005] 7 CLJ 41 HC ***(refd)***

Legislation referred to:

Federal Territory (Planning) Act 1982, ss. 13, 16(1), 22(4), 27

Town and Country Planning Act 1976, s. 12

For the applicants - WF Lai; M/s Shearn Delamore & Co

For the 1st respondent - B Thangaraj; M/s Thangaraj & Assocs

For the 2nd respondent - Yatiswara Ramachandran; M/s Azman Davidson & Co

For the 3rd & 4th respondents - Kevin Wong (Nurul Najwa with him); M/s Yeap, Yong & Amy

Reported by Sharmini Pillai

JUDGMENT

Mohd Zawawi Salleh J:

Application

[1] The applicants are seeking, *inter alia*, for an order of *certiorari* to quash the decision of the 1st respondent in granting planning permission in respect of the proposed development on Lot 241 Seksyen 63 Changkat Kia Peng ("Subject Property One") and Lot 242 Seksyen 63 Changkat Kia Peng ("Subject Property Two"). ("The Impugned Decision")

[2] As a result of a consent order dated 24 August 2010, the court allowed Sumuracres' and the Peak's application to interfere and be made respondents in the proceedings.

[3] After considering the rival submissions, the court dismissed the application with costs. Cost was fixed at RM8,000.

Background Facts

[4] To better understand the issue, regard must be had to the background of the case. I shall now narrate it briefly as follows:

(a) The applicants' lands are all located along the same road ie, Changkat Kia Peng as Lot 241, Section 63, Jalan Changkat Kia Peng ('Subject Property One') and Lot 242, Section 63, Jalan Changkat Kia Peng ('Subject Property Two'). Changkat Kia Peng is a *cul de sac*.

(b) In respect of Subject Property One, there is an application for planning permission made to the respondent for development of 1 block of 30 storey condominium (42 units) with 1 level of basement carpark.

(c) On 25 May 2007, the respondent placed an advertisement giving notice of the proposed development of Subject Property One and of the right to the registered owners of adjoining lands to make objections in writing to the proposed development within four weeks from the date of the advertisement.

(d) On 12 June 2007, the applicants objected to the proposed development of Subject Property One on the basis that the proposed development will increase in residential density from ten persons per acre and further aggravate the already serious traffic congestion at Jalan Kia Peng.

(e) The applicants had enquired from the respondent the status of the application for planning permission but to no avail.

(f) In respect of Subject Property Two, there is an application for planning permission by Sumuacres together with its business partner at that time, one I-Group to the respondent for development of 1 block of 41 storey luxury condominiums with 3-storey carpark. Sumuacres appointed The Peak as its development manager to develop Subject Property Two.

(g) The objections were filed by solicitors for the applicants for the application for the proposed development of Subject Property Two on similar grounds.

(h) On 7 August 2008, Development Order for Subject Property Two was granted by the 1st respondent to The Peak.

(i) As at 20 October 2008, both Sumuracres and The Peak had spent a total sum of RM1,585,343.32 in respect of the development of Subject Property Two.

Issues to Be Decided By The Court

[5] The issues to be decided by the court are as follows:

(a) Whether the 1st respondent's decision to grant planning permission is an abuse of statutory discretion and misconstruing the effect of statutory powers under s. 27 of the Federal Territory (Planning) Act 1982 (Act 267);

(b) Whether the 1st respondent had failed to consider relevant considerations when granting planning permission to the 3rd and 4th defendants; and

(c) Whether the 1st respondent had failed to observe the rules of natural justice and procedural fairness by denying the applicants the rights to inspect the relevant development plan and their right to be heard on the same.

1st And 2nd Issues

[6] The applicants submitted that the impugned decision was made in total disregard of the Draft Local Plan released to the public on 15 May 2008. According to the applicants, the Draft Local Plan, when released to the public in May 2008, was a comprehensive plan with details of land use, built up areas and density of six strategic zones. Therefore, the Draft Local Plan has been finalized. The adoption of the Draft Local Plan was subject only to public feedback at public hearing to be held from 15 May 2008 to 30 August 2008.

[7] It is the submission of the applicants that the 1st respondent in relying entirely on the 2020 Structure Plan and the Development Guidelines and in disregarding entirely the Draft Local Plan when deciding to grant planning permission in respect of Subject Property One and Subject Property Two had totally misconstrued the scope and effect of his statutory powers under s. 22 of the Federal Territory (Planning) Act 1982 read with the Planning (Development) Rules 1970:

7.1 The 2020 Structure Plan was made pursuant to s. 10(1) of the Federal Territory (Planning) Act 1982. It is merely a document stating the general planning policies and strategies to guide the development of Kuala Lumpur, and is subjected to changes and variations in the intervening period. The 1st respondent was not required to slavishly comply with the 2020 Structure Plan. The introductory paragraph of the 2020 Structure Plan is self-explanatory:

> The Kuala Lumpur Structure Plan 2020 (the Plan) contains the vision, goals, policies and proposals to guide the development of Kuala Lumpur (the City) over the next 20 years. **It does not contain proposals for detailed physical planning for any specific area.** Detailed physical proposals shall be relegated to a subsequent stage of the development plan, **that is the local plan.** (emphasis added)

7.2 In support of the submissions, the applicants cited the following authority/cases:

(i) Federal Territory (Planning) Act 1982;

(ii) *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65; *Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor* [2008] 6 CLJ 805.

7.3 The Development Guidelines is not even a legally binding document. It is merely an internal document prepared by the Master Plan Department of the 1st respondent and allegedly agreed upon by the 1st respondent's Town Planning Committee in 2003 to guide the 1st respondent on the type of land use and development intensity in the Kia Peng area. There is no legal obligation on the 1st respondent to comply with the Guidelines.

7.4 This is to be contrasted with the Draft Local Plan, the preparation and finalization of which is envisaged by the Federal Territory (Planning) Act 1982 and the Town and Country Planning Act 1976.

(a) The respondent was empowered under the Acts to prepare a Local Plan which shall consist of a map and a written statement and shall contain the respondent's formulation of proposals relating to:

A – the development;

– use of land;

– the protection and improvement of the physical environment of;

B

– the preservation of the natural topography of;

– the improvement of the landscape of;

– the preservation and planting of trees in;

C

– the making up of open spaces in;

– the preservation and enhancement of character and appearance of buildings in;

D

– the improvement of communications in; and

– the management of traffic in;

in area of the Local Plan.

E

(See s. 13 of the Federal Territory (Planning) Act 1982; and s. 12 of the Town and Country Planning Act 1976)

(b) It is the Draft Local Plan which sets out the specific planning policies and strategies of the respondent. Here, the Draft Local Plan, which was finally unveiled to the public on 15 May 2008, clearly evinced the respondent's intended change of planning policies in so far as the Changkat Kia Peng area was concerned since the 2020 Structure Plan was gazetted in 2004. Changkat Kia Peng area was intended to be re-zoned with plot ratio of one to six only and with building restrictions of not more than eight storeys.

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Court's Finding On 1st And Second Issues

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[8] With respect, the court is unable to agree with the submissions of the applicants. Based on the 1st respondent's affidavits (2) and (3), it is clear that when the planning permission for Subject Property One was approved, the Draft Local Plan was not in existence whilst the Draft Local Plan was in draft form when the planning permission for Subject Property Two was approved.

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[9] In para. 16 of the 1st respondent's affidavit (2), he had explained the issue of the Draft Local Plan raised by the applicants as follows:

> 16. Berkaitan pelan yang dirujuk oleh Pemohon-Pemohon di dalam perenggan 12 Afidavit Pemohon (1), Responden akan menyatakan bahawa:
>
> a) pelan yang pada masa ini disediakan oleh Responden adalah deraf pelan tempatan yang masih belum diwartakan sebagai pelan pembangunan bagi Bandaraya Kuala Lumpur;
>
> b) semasa mempertimbangkan dan meluluskan permohonan perancangan bagi Hartanah Subjek Satu dan Hartanah Subjek Dua, Responden telah membuat penilaian perancangan berdasarkan kepada dasar-dasar dan strategi pelan yang terpakai pada masa matan berkenaan;
>
> c) berdasarkan Pelan Struktur Kuala Lumpur 2020, kawasan di mana Hartanah Subjek Satu dan Hartanah Subjek Dua terletak adalah dikenalpasti sebagai kawasan kediaman yang berada di dalam zon ketinggian bangunan zon tinggi dan bagi pembangunan kediaman berkualiti tinggi.

[10] Further, in paras. 11 and 12 of the 1st respondent's affidavit in reply (3), Dato' Ab. Hakim bin Borhan, affirmed on 29 October 2010 ("1st respondent's affidavit (3)"), the 1st respondent further explained that:

> 11. Bagi menjawab perenggan 14.5(i), (ii) dan (iii) Afidavit Pemohon (2), saya akan mengulangi penegasan saya di dalam perenggan 4.5 Afidavit Responden (1) dan saya akan menyatakan bahawa deraf pelan tempatan ini hanya dibentangkan untuk mendapat pandangan dan bantahan awam daripada 15hb Mei 2008 hingga 30hb Ogos 2008. Deraf pelan tempatan berkenaan adalah deraf pelan pembangunan bagi Bandaraya Kuala Lumpur dan deraf pelan tempatan berkenaan yang masih berada di peringkat awal akan melalui beberapa proses pertimbangan dan pindaan selepas mendengar pandangan dan bantahan daripada pelbagai pihak serta orang awam. Semasa kelulusan perancangan diberikan kepada Hartanah Subjek Satu, deraf pelan tempatan masih belum disediakan. Pelan-pelan yang relevan semasa Subjek Dua adalah dasar-dasar dan strategi-strategi di dalam Pelan Struktur 2020 yang diwartakan pada 16hb Ogos 2004 dan garis panduan perancangan. Garis Panduan Pembangunan Jalan Changkat Kia Peng dan sekitarnya yang disediakan oleh Jabatan Pelan Induk untuk mengesyorkan jenis guna tanah dan intensiti pembangunan

di sekitar kawasan Jalan Changkat Kia Peng adalah untuk tujuan memudahkan pengawasan kawasan di sesuatu kawasan perancangan. Garis Panduan Pembangunan Jalan Kia Peng ini telah dipersetujui oleh TPC di dalam mesyuarat yang diadakan pada 5hb Ogos 2003. Garis panduan berkenaan memberi panduan kepada pemilik tanah dan arkitek akan garis panduan umum di sesuatu kawasan perancangan yang perlu diambilkira apabila permohonan untuk kelulusan perancangan dikemukakan. Garis panduan ini adalah disediakan bagi pihak umum dan boleh didapati di 'website' Jabatan Perancang Bandar. Selain daripada pelan-pelan berkenaan, pelbagai soal teknikal berkaitan pembangunan-pembangunan ini juga telah dibincang dan diambilkira oleh TPC. Sesalinan minit mesyuarat bertarikh 5hb Ogos 2003 dan Garis Panduan Pembangunan Jalan Kia Peng adalah dikepilkan dan ditanda sebagai "Eksibit AHB-7."

11A. Pelan Struktur Kuala Lumpur 2020 juga telah mengenalpasti kawasan Jalan Changkat Kia Peng sebagai kawasan untuk bangunan tinggi dan diklasifikasikan sebagai 'High Zone' yang membenarkan pembangunan bangunan bertingkat-tingkat tinggi. Sesalinan muka surat yang relevan daripada Pelan Struktur Kuala Lumpur 2020 adalah dikepilkan dan ditanda sebagai "Eksibit AHB-8".

12. Perenggan 15 dan 16 Afidavit Pemohon (2) adalah dinafikan dan saya akan mengulangi penegasan saya di dalam perenggan 5 dan 6 Afidavit Responden Pertama (1) dan soal lalulintas dan keadaan trafik adalah di antara perkara-perkara yang diambilkira semasa kelulusan perancangan diberikan bagi Hartanah Subjek Satu dan Hartanah Subjek Dua.

[11] It is pertinent to note that the Draft Local Plan would be adopted in its original form or modified after taking into account the objections or representations (see s. 16(1) and 22(4) of the Act 267).

[12] In taking into account the relevant considerations under s. 22(4) of the Act 267, regard should be had to the Local Plan and not the Draft Local Plan. As the local plan is yet to be adopted in accordance with s. 16(1), the 1st respondent is to have regard to the Comprehensive Development Plan and any other material consideration.

[13] It is settled law that where a challenge is made that a particular decision was not arrived at in accordance with law, the decision – maker may file affidavit rebutting the allegation and

setting out those matters which led him make the impugned decision. In *Datuk Bandar Kuala Lumpur v. Zain Azahari Zainal Abidin* [1997] 2 CLJ 248, Gopal Sri Ram JCA (as he then was) said at p. 270:

> Third and lastly, a public decision-maker whose exercise of discretion is questioned must meet the challenge by adducing relevant and admissible evidence. Applications for *certiorari* and the other relief specified in para 1 of the Schedule to the Courts of Judicature Act 1964 are normally contested on affidavit evidence. As a general rule, where an applicant files an affidavit *alleging that a particular decision was not arrived at in accordance with law, eg because the decision-maker had taken into account irrelevant matters, it is incumbent upon the particular decision-maker in the usual way to affirm and file an affidavit rebutting the allegation and setting out those matters which led him to make the impugned decision* ... (emphasis added)

[14] In this instant case, the 1st respondent had filed an affidavit to set out the matters which he took into consideration when granting the planning permission. In respect of the Subject Property One, 1st respondent deposed in his affidavit as follows:

> 11. Berkaitan latar belakang permohonan perancangan bagi pembangunan yang dicadangkan di atas Hartanah Subjek Satu, Responden akan menyatakan bahawa permohonan berkenaan telah melalui proses pertimbangan yang berikut:
>
> 11.1 pada 13hb Oktober 2006, permohonan untuk membangunkan Hartanah Subjek Satu telah dikemukakan untuk cadangan menambah kepadatan penduduk daripada 100 orang seekar kepada 192 orang seekar dan cadangan pembangunan 1 blok pangsapuri mewah 35 tingkat;
>
> 11.2 pada 16hb Januari 2007 semasa mesyuarat "Town Planning Committee" ("TPC"), permohonan perancangan yang dikemukakan bagi Hartanah Subjek Satu telah dipertimbangkan dan diputuskan bahawa:
>
> a) permohonan berkenaan boleh diproses untuk pertimbangan lanjut tertakluk kepada tindakan Kaedah 5 untuk mempelawa bantahan daripada pemilik berdaftar bersebelahan yang layak untuk membantah; dan
>
> b) pindaan dilakukan kepada cadangan pembangunan di mana di antara lain adalah untuk menurunkan ketinggian bangunan daripada 35 tingkat kepada ketinggian yang tidak melebihi 30 tingkat;

11.3 pada 19hb Mac 2007, pemaju telah mengemukakan pelan-pelan pindaan dengan cadangan pembinaan dengan ketinggian 30 tingkat untuk pertimbangan selanjutnya;

11.4 proses pelawaan bantahan daripada pemilik berdaftar bersebelahan yang layak untuk membantah telah dilakukan seperti yang dinyatakan di dalam perenggan 9 dan 10 di atas;

11.5 selepas selesai proses pendengaran bantahan, permohonan untuk kelulusan perancangan dipertimbangkan di dalam mesyuarat yang diadakan pada 3hb Oktober 2007 di mana kelulusan telah diberikan untuk menambah kepadatan penduduk dari 10 orang seekar kepada 168 orang seekar dan pembangunan 1 blok pangsapuri mewah 30 tingkat (42 unit). Semasa mempertimbangkan permohonan perancangan berkenaan, selain daripada pelbagai soal perancangan yang telah dipertimbangkan, Responden telah di antara lain mengambilkira perkara-perkara berikut:

a) alasan-alasan bantahan yang dikemukakan oleh Pemohon-Pemohon secara bertulis dan lisan;

b) garis panduan perancangan di Jalan Kia Peng dan kawasan sekitarnya di mana kawasan ini adalah terletak di kawasan di mana konsep pembangunan kediaman amat digalakkan bagi mencapai sasaran penduduk dalam kawasan Perancangan Pusat (CPA). Ini adalah selaras dengan polisi untuk menggalakkan lebih ramai penduduk untuk tinggal di pusat Bandaraya Kuala Lumpur;

c) kepadatan pembangunan kediaman yang dibenarkan bagi kawasan ini adalah sehingga 500 orang seekar walhal kepadatan pembangunan yang dicadangkan adalah 168 orang seekar;

d) cadangan pembangunan ini adalah bagi pangsapuri mewah di mana hanya terdapat 42 unit di mana keluasan setiap unit adalah di antara 5,844 kaki persegi sehingga 23,382 kaki persegi;

e) jalan keluar masuk bagi kawasan ini adalah melalui Jalan Changkat Kia Peng dan jalan ini akan dilebarkan kepada 50 kaki dan mampu untuk menampung intensiti kenderaan keluar masuk ke Hartanah Subjek Satu;

f) jumlah ruang letak kereta yang perlu bagi pembangunan ini adalah 70 tetapi ruang letak kereta yang disediakan adalah 175 di mana terdapat kelebihan ruang letak kereta sebanyak 105;

g) rekod kelulusan perancangan yang berdensiti tinggi di kawasan sekitar Hartanah Subjek Satu adalah seperti berikut:

Bil	Cadangan Pembangunan	No. Lot/ Jalan	Kepadatan (Bil. Unit)	Tinggi (Tingkat)	Status
1.	Sri Kia Peng Kondo	274, Jalan Changkat Kia Peng		13	Sedia ada
2.	Twelve Kia Peng Kondo	101, Jalan Kia Peng		33	Lulus P.P
3.	Kraf-Seagroatt & Campbell	286, Jalan Kia Peng	127 ose (20 unit)	12 & 16	Masih dalam pertimbangan
4.	Stonor Park	111, Jalan Stonor	397 ose (73 unit)	20 & 20	Dalam pembinaan
5.	Tetuan Layar Intan S/B & Impian Bebas S/B – The Binjai	Lot P1 & P, KLCC	494 ose (172 unit)	45 & 44	P.P 10.1.2002
6.	Convention Hotel	Lot G, KLCC	-	34	Dalam pembinaan
7.	Menara Exxonmobil	Lot H, KLCC	-	29	Sedia ada
8.	Dua Residency	123, Jalan Tun Razak	289 ose	20/4	Dalam pembinaan
9.	Pancaran Suasa	116, Jalan Stonor	500 ose (177 unit)	41	Dalam pembinaan
10.	Hayatu Corporation	233, Jalan Changkat Kia Peng	299 ose (93 unit)	30	Dalam pembinaan
11.	Magnani Construction	Lot 111 & 112, Jalan Conlay	1,540,606 kp	37 & 44	Dalam pembinaan
12.	True Vitality	123, Jalan Tun Razak	289 ose	20/4	Dalam pembinaan

A h) adalah juga di dalam perancangan bagi kawasan ini bahawa suatu sistem aliran transit ringan (monorail) akan melalui kawasan ini dengan suatu stesen transit di Jalan Kia Peng.

B **[15]** As regards Subject Property Two, the 1st respondent deposed in his affidavit as follows:

15. Berkaitan dengan perenggan 11 Afidavit Pemohon (1), Responden akan menyatakan perkara-perkara berikut berkaitan latar belakang permohonan untuk perancangan bagi
C Hartanah Subjek Kedua:

15.1 suatu permohonan untuk perancangan telah diterima pada 20hb Julai 2007 untuk pembangunan di atas Hartanah Subjek Kedua bagi menambah kepadatan penduduk dari 10 orang seekar kepada 291 orang seekar dan untuk
D pembangunan 1 blok pangsapuri mewah 43 tingkat (102 unit);

15.2 permohonan perancangan berkenaan telah dipertimbangkan semasa mesyuarat pada 13hb November 2007 dan di dalam mesyuarat berkenaan telah diputuskan bahawa
E permohonan berkenaan boleh diproses untuk pertimbangan selanjutnya tertakluk kepada tindakan Kaedah 5 untuk mempelawa bantahan daripada pemilik berdaftar bersebelahan yang layak membantah dan ketinggian bangunan yang dibenarkan adalah tidak
F melebihi 41 tingkat. Pihak Pemaju telah dimaklumkan untuk mengemukakan pelan-pelan pindaan;

15.3 pada 14hb Disember 2007 pihak pemaju telah mengemukakan pelan-pelan pindaan dengan ketinggian bangunan dicadangkan setinggi 41 tingkat (104 unit)
G dengan kepadatan penduduk 297 orang seekar;

15.4 notis untuk mempelawa bantahan telah diiklankan di dalam akhbar tempatan pada 16hb, 17hb dan 18hb Januari 2008 di mana bantahan bertulis telah diterima daripada Pemohon-Pemohon di mana bantahan-bantahan
H yang dikemukakan adalah berkaitan kesesakan lalulintas dan peningkatan secara mendadak kepadatan penduduk di kawasan ini;

15.5 sesi pendengaran bantahan telah diadakan pada 28hb Februari 2008 di mana wakil Pemohon-Pemohon serta
I pemaju telah hadir. Sesalinan minit mesyuarat sesi pendengaran bantahan yang diadakan pada 28hb Februari 2008 adalah dikepil dan ditanda sebagai Eksibit "AHB-5".

15.6 selepas selesai proses pendengaran bantahan, permohonan untuk kelulusan perancangan telah diberikan untuk menambah kepadatan penduduk dari 10 orang seekar kepada 297 orang seekar dan pembangunan 1 blok pangsapuri mewah 41 tingkat (104 unit). Semasa mempertimbangkan permohonan perancangan berkenaan, selain daripada pelbagai soal perancangan yang telah dipertimbangkan, Responden telah di antara lain mengambil kira perkara-perkara berikut:

a) alasan-alasan bantahan yang dikemukakan oleh Pemohon-Pemohon secara bertulis dan lisan;

b) garis panduan perancangan di Jalan Kia Peng dan kawasan sekitarnya di mana kawasan ini adalah terletak di kawasan di mana konsep pembangunan kediaman amat digalakkan bagi mencapai sasaran penduduk dalam kawasan Perancangan Pusat (CPA). Ini adalah selaras dengan polisi untuk menggalakkan lebih ramai penduduk untuk tinggal di pusat Bandaraya Kuala Lumpur;

c) jalan keluar masuk bagi kawasan ini adalah melalui Jalan Changkat Kia Peng dan jalan ini akan dilebarkan kepada 50 kaki dan mampu untuk menampung intensiti kenderaan keluar masuk ke Hartanah Subjek Satu;

d) kepadatan pembangunan kediaman yang dibenarkan bagi kawasan ini adalah sehingga kepadatan 500 orang seekar walhal kepadatan pembangunan yang dicadangkan adalah 297 orang seekar;

e) cadangan pembangunan ini adalah bagi pangsapuri mewah di mana hanya terdapat 104 unit di mana keluasannya adalah di antara 2,380 kaki persegi sehingga 6,618 kaki persegi;

f) jumlah ruang letak kereta yang perlu pembangunan ini adalah 114 tetapi ruang letak kereta yang disediakan adalah 319 di mana terdapat kelebihan ruang letak kereta sebanyak 205;

g) rekod kelulusan perancangan yang berdensiti tinggi di kawasan sekitar Hartanah Subjek Dua adalah seperti yang dinyatakan di dalam perenggan 11.5(g) di atas;

A h) adalah juga di dalam perancangan bagi kawasan ini bahawa suatu sistem aliran transit ringan (monorail) akan melalui kawasan ini dengan suatu stesen transit di Jalan Kia Peng.

B **[16]** Based on the above affidavits, the court is satisfied that the 1st respondent had given cogent reasons which are relevant to planning consideration in granting the planning permission for Subject Property One and Subject Property Two. Therefore, the 1st respondent had taken into account all the relevant considerations in granting the planning permission.

C

3rd Issue

[17] The applicants alleged that the 1st respondent did not provide them with certain guidelines at the oral hearing of
D objection of 18 July 2007. According to the applicants, since the developer was relying on the said guidelines to justify the planning permission, the developer must surely furnish the said guidelines to the applicants to enable the hearing to be conducted in a meaningful manner. Therefore, the applicants posit that the 1st
E respondent decision was made in breach of the rules of natural justice and rules of procedural fairness.

Court's Finding On 2nd Issue

[18] The court finds difficulty in comprehending the applicants'
F argument on this issue. There is no doubt that the guideline is a public document available to the general public. One need only to browse the website of Jabatan Perancang Bandar of the 1st respondent to have access and peruse the same. According to the 1st respondent, the applicants did not request for the guidelines
G during the hearing of the objections. Therefore, the complaint by the applicants is not meritorious.

[19] Concerning traffic congestion, in considering the application for planning permission, the 1st respondent had deposed that the
H following matters were taken into consideration:

a) there are sufficient car parks;

b) Jalan Changkat Kia Peng can be widened to 50 feet;

I c) there are plans to construct a monorail to cater for the residence in this area and station is located at Jalan Kia Peng.

[20] Despite the 1st respondent's explanation, the 1st applicant who is not an expert on traffic matters in the City of Kuala Lumpur, had deposed in the applicants' second affidavit of Chan Hua Eng affirmed on 5 September 2008 at para. 24(iv)(a) that "To suggest that Changkat Kia Peng is to be widened to 50 feet does not make sense and is intended to justify the approvals given taking into account the fact that Jalan Kia Peng, which is a main road of which Changkat Kia Peng is only a feeder road, is only 45 feet wide". With respect, such an allegation is made without any proper plans or report from an expert.

Applicant's Application For Planning Permission

[21] With respect, the applicants' grounds to challenge the 1st respondent's decision no longer holds water for the simple reason that the applicants themselves have applied for planning permission to develop their land (Lot 237 and Lot 240) which is located next to Subject Property One and Subject Property Two into a high density development. In this respect, para. 30 of the 1st respondent's affidavit (3) says:

> 30. Saya juga akan menyatakan bahawa bantahan-bantahan yang dikemukakan oleh Pemohon-Pemohon di dalam prosiding ini adalah langsung tidak berasas kerana Pemohon-Pemohon sendiri telah mengemukakan permohonan perancangan untuk pembangunan berdensiti tinggi pada 2hb Mei 2009 untuk mendapat kelulusan bagi projek-projek yang berikut di atas tanah-tanah milik Pemohon-Pemohon:
>
> 30.1 Permohonan bagi cadangan:
>
> I. Menambah kepadatan penduduk daripada 10 orang seekar kepada 348 orang seekar;
>
> II. Pembangunan 1 blok pangsapuri mewah 40 tingkat (70 unit) yang mengandungi:
>
> a) 1 tingkat ruang legar, servis dan tempat letak kereta di tingkat bawah;
>
> b) Tingkat tempat letak kereta di tingkat 1 hingga tingkat 6;
>
> c) 1 tingkat kemudahan awam di tingkat 7;
>
> d) Tingkat unit pangsapuri mewah dari tingkat 8 hingga tingkat 39.

Di atas Lot 237, Seksyen 63, Jalan Changkat Kia Peng, Kuala Lumpur

30.2 Permohonan bagi cadangan

I. Menambah kepadatan penduduk daripada 10 orang seekar kepada 345 orang seekar.

II. Pembangunan 1 blok pangsapuri mewah 42 tingkat (70 unit) yang mengandungi:

i. 1 tingkat tempat letak kereta bawah tanah;

ii. 1 tingkat ruang legar, servis dan tempat letak kereta aras tanah (di aras bawah);

iii. 5 tingkat tempat letak kereta aras tanah (di atas 1-5);

iv. 1 tingkat kemudahan awam (di aras 6);

v. 36 tingkat unit-unit pangsapuri mewah (di aras 7-39)

Di atas Lot 240, Seksyen 63, Jalan Changkat Kia Peng, Kuala Lumpur.

Permohonan-permohonan berkenaan telah diluluskan secara prinsip pada 20hb Ogos 2009 tetapi Pemohon-Pemohon telah mengemukakan pelan-pelan pindaan. Sesalinan permohonan Pemohon-Pemohon beserta kelulusan prinsip yang diberikan oleh Responden Pertama adalah dikepilkan dan ditanda sebagai "Eksibit AHB-10". Oleh yang demikian, soal kononnya layanan berlainan yang diberikan kepada Tanah Pemohon-Pemohon seperti yang dinyatakan di dalam perenggan 24(iv) Afidavit Pemohon (2) adalah langsung tidak berasas.

[22] It is pertinent to note that the 1st respondent, had in para. 30 of affidavit (3), stated that the applicants' planning permission was granted in principle in 20 August 2008. However, it was the applicants themselves who had failed to submit the requested plans to the 1st respondent. Therefore, there is no basis for the alleged differential treatment given to Sumuacres and The Peak in respect of Subject Property Two.

Conclusion

[23] Planning judgment is within the exclusive province of the local planning authority. The remedy of judicial review is to be exercised in exceptional cases and the existence or non-existence of a fact is left to the judgment and discretion of the local authority.

[24] The grounds advanced by the applicants are matters relating to the merits of the planning decisions and is not the function of the court to adjudicate upon the decision of the planning authority. (See *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65; *Datuk Bandar Kuala Lumpur v. Zain Azahari Abidin (supra); YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Jaafar v. Datuk Bandar Kuala Lumpur & Anor* [2005] 7 CLJ 41; *R (on the application of Alconbury Development Ltd) v. Secretary of State for Environment, Transport and the Region and other cases* [2001] 2 All ER 929).

[25] The court accepts the contention that in a suitable case the court is allowed to quash a decision of local authority on the grounds of misunderstanding or ignorance of an established fact (see the views of Lord Slynn Hadley in *R v. Criminal Injuries Compensation Board, Ex p A* [1999] 2 AC 330, 334-345). The court is entitled to subject the decision to a close and rigorous analysis. However, the intensity of review must depend upon the nature of the case. As stated by Lord Brightman, in *R v. Hillingdon London Borough Council, Ex p Puhlhofer* [1986] AC 484, 518:

> Parliament intended the local authority to be a judge of fact. The Act abounds with the formula when, or if, the housing authority are satisfied as to this, or that, or have reason to believe this, or that. Although the action or inaction of a local authority is clearly susceptible to judicial review where they have misconstrued the Act, or abused their powers or otherwise acted perversely, I think that great restraint should be exercised in giving leave to proceed by judicial review.

[26] Based on the reasons above stated, I would dismiss this application with costs.